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No. 93-880

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

JUDY MADSEN, ED MARTIN, and SHIRLEY HOBBS,

Petitioners,

—v.—

WOMEN'S HEALTH CENTER, INC.,
AWARE WOMAN CENTER FOR CHOICE, INC.,
EPOC CLINIC, INC., and CENTRAL FLORIDA
WOMEN'S HEALTH ORGANIZATION, INC.,

Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

BRIEF OF AMICI CURIAE NOW LEGAL DEFENSE AND EDUCATION FUND, NATIONAL ORGANIZATION FOR WOMEN, INC., JOHN E. COWLES, AND LUCINDA M. FINLEY, IN SUPPORT OF RESPONDENTS

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INTEREST OF AMICI CURIAE

Amici Curiae file this brief in support of Respondents. The specific statements of Amici Curiae are set forth in Appendix III.[1]

SUMMARY OF ARGUMENT

The judiciary's equitable power to issue injunctive relief is unique. In circumstances where parties to a proceeding engage in an established pattern of unlawful, even violent, behavior, the court's power to probe the specific facts through an evidentiary hearing and craft a narrowly-tailored, flexible remedy focused on those specific facts is invaluable and necessary in maintaining the rule of law. Because injunctive relief is unique, strict adherence to the standards developed for evaluating statutes or regulations of general applicability is inappropriate. Unlike a statute, an injunction (1) applies only to a small segment of the public; (2) is based on judicial findings of fact made after a hearing as to the particularized need for the restrictions; (3) must give actual notice only to the subjects of the injunction; and (4) by its nature is "permanent" only so long as it is not modified or vacated by the court.

The injunction here properly balances First Amendment considerations with the need to safeguard the rights of both Respondents and third-persons in a context of ongoing illegality and violence at the Respondent clinics, and in the wake of the murder of a clinic doctor in Northern Florida by an affiliate of the same extremist group, Rescue America, involved in the blockades here. As recognized by

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[1] Amici Curiae file this brief with the consent of all parties. Letters of consent have been filed with the Clerk of the Court pursuant to Rule 36.2 of the Rules of this Court.

lower courts across the country confronting such violent and disruptive actions against abortion clinics, the reproductive rights of women, the rights of patients to medical care, the governmental interest in maintaining public safety, and the rights of clinic staff to privacy in their homes, all support the narrowly-tailored balance struck by the trial court in crafting the injunction here.

ARGUMENT

I. MEASURED AGAINST THE STANDARDS GOVERNING INJUNCTIONS DESIGNED TO SAFEGUARD THE RIGHTS OF BOTH RESPONDENTS AND THIRD-PERSONS FROM IRREPARABLE INJURY, THE TRIAL COURT'S INJUNCTION SHOULD BE AFFIRMED

In Schenk v. United States, 249 U.S. 47 (1919), Justice Holmes observed that

> the character of every act depends upon the circumstances in which it is done. The most stringent protection of free speech would not protect a man in falsely shouting fire in a theatre and causing a panic. It does not even protect a man from an injunction against uttering words that may have all the effect of force. The question in every case is whether the words are used in such circumstances and are of such a nature as to create a clear and present danger that they will bring about the substantive evils that Congress has a right to prevent.

Id. at 52. Though Justice Holmes' "clear and present danger" test has been refined by later case law, see Brandenburg v. Ohio, 395 U.S. 444 (1969), the necessity

of examining injunctions in the context of the specific circumstances has been reiterated again and again. See, e.g., Carroll v. Princess Anne, 393 U.S. 175, 183 (1968) ("whether the facts justify the use of the drastic power of injunction necessarily turns . . . upon a delicate assessment of the particular situation"); American Steel Foundries v. Tri-City Cent. Trades Council, 257 U.S. 189, 198 (1921) ("Each case must turn on its own circumstances"). Further, this Court has never retreated from the principle that incidental restrictions on speech may, under certain circumstances, be necessary to protect the public safety, the rights of others and the rule of law. See, e.g., Wisconsin v. Mitchell, 113 S. Ct. 2194, 2199 (1993) ("potentially expressive activities that produce special harms distinct from their communicative impact are entitled to no constitutional protection"); Brandenburg v. Ohio, 395 U.S. 444 (1969) (inducement to imminent lawless activity not protected by First Amendment). A context of ongoing violence is a particularly compelling circumstance for such judicial regulation. As Justice Frankfurter stated in Milk Wagon Drivers Union, Local 753 v. Meadowmoor Dairies, 312 U.S. 287 (1941), "[an] utterance in the context of violence can lose its significance as an appeal to reason and become part of an instrument of force. Such utterance was not meant to be sheltered by the Constitution." Id. at 293.

Petitioners are individuals closely associated with Operation Rescue America (hereinafter, "Rescue America"), an organization acting in coalition with Operation Rescue, Operation Goliath, and other groups to execute a "nationwide campaign . . . directed towards closing down abortion clinics and providers throughout the country."[2] J.A.6. Petitioners intend to accomplish their

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[2] Although not participating as Petitioners before this Court, Operation (continued...)

objective by mobilizing "thousands of protestors and blocking access to the [medical] facilities." Id.

In pursuing this strategy, members of Rescue America and its sister organizations have repeatedly engaged in violence and demonstrated contempt for law and the rights of others, leading state and federal judges throughout the United States to issue at least 40 reported injunctions and numerous unreported injunctions against their unlawful behavior.[3] Like Respondents here, clinics across the country are frequently besieged by mobs of anti-abortion extremists who block access to clinic doors, sidewalks and parking lots; surround individual patients and health care providers and harass and assault them; push signs and literature in the faces of patients and staff; prevent patients and staff from entering or leaving buildings, even in medical emergencies; scream and chant loudly enough to be audible inside clinics; invade clinic facilities while medical procedures are underway; and chain themselves to clinic property.[4]

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[2] (...continued)
Rescue and Operation Goliath were named as defendants before the lower court and are bound by the injunction at issue here. J.A.56.

[3] All known reported federal and state court injunctions against these groups and similar organizations are cited and briefly summarized in Appendix I hereto. Appendix II summarizes all known unreported injunctions issued by Florida state courts.

[4] See, e.g., Portland Feminist Women's Health Ctr. v. Advocates for Life, 859 F.2d 681, 683 (9th Cir. 1988) (demonstrators impeded entrance to clinic; screamed and yelled at patients; pushed literature on patients who had declined it; impeded passage of an ambulance arriving to transport a patient to a hospital); Planned Parenthood v. Williams, 16 Cal. Rptr.2d 540, 541 (Ct. App. 1993) (demonstrators impeded access to the clinic; confronted patients with literature and plastic fetuses; told patients they were killing their babies; photographed patients and wrote down their license plate numbers).

These actions are part of a national campaign by well-organized anti-abortion zealots who are committed to shutting down clinics in order to eliminate access to abortion.[5] See, e.g., Roe v. Operation Rescue, 919 F.2d 857, 861 (3d Cir. 1990) (blockades constituted "one phase of a well-orchestrated campaign to disrupt and shut down abortion clinics throughout the nation"). Many clinics have been subjected to other types of violence and threats of violence (such as death threats against health care workers). See Feminist Majority Foundation, supra, at 5. Indeed, the trial court here found that Petitioners and those acting in concert with them had engaged in repeated instances of trespass (J.A.53), stalking (J.A.55), threats of physical harm (J.A.54), deliberate jamming of phone lines (J.A.55), obstruction of traffic (J.A.51-52), and other criminal and civil violations (J.A.17). These activities are consistent with Rescue America's practice of urging "their members [to] ignore the law of the State and the police officers who remove them from their blockade positions." J.A.7.

Petitioners challenge the constitutionality of an injunction issued by the trial court on April 8, 1993, in Seminole County, in central Florida, a few weeks after the

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[5] See generally Feminist Majority Foundation, 1993 Clinic Violence Survey Report 2 (16 percent of clinics responding to survey were blockaded during the first seven months of 1993; 15 percent reported that anti-abortion extremists had actually invaded the clinic) (for the Court's convenience, this document has been lodged with the Clerk of the Court); National Abortion Federation, Incidents of Violence & Disruption Against Abortion Providers, 1993 (over 500 incidents of clinic blockades and 32,000 arrests since 1987); National Abortion Rights Action League, Facing A Future Without Choice: A Report on Reproductive Liberty in America 6-8 (1992) [hereinafter, NARAL]; National Clinic Defense Project of the Feminist Majority Foundation, Reported Incidents of Violence and Harassment at Abortion Clinics in Florida (1993) [hereinafter, National Clinic Defense Project].

March 10, 1993, assassination of Dr. David Gunn in Pensacola, Florida. See Larry Rohter, Doctor is Slain During Protests Over Abortions, N.Y. Times, March 11, 1993, A:1(2). Shortly after the killing, the media reported that the suspect, Michael Griffin, was a member of Rescue America and had been at Dr. Gunn's clinic participating in a blockade at the time of the murder. Id.; Paul Gray, Thou Shalt Not Kill, Time, March 22, 1993, at 44 (before the protest, "Griffin had called John Burt, regional director of Rescue America . . . to say he would take part").[6]

The trial court issued the injunction here after a careful adversary hearing lasting three days and after a prior less specific injunction had been repeatedly flouted by defendants below.[7] J.A.50. After hearing evidence on the pattern of blockades and threats, and the climate of fear they intentionally engendered, the trial court banned the organizational and individual defendants, and persons acting in concert with them, from engaging in, inter alia, four forms of threatening activity aimed at clients and employees of the Respondent clinics: (1) congregating, picketing, patrolling, demonstrating or entering a 36 foot buffer zone around the clinic (J.A.57-59), where cars and individuals had been blockaded repeatedly by defendants below and their affiliates in violation of local law and the prior injunction; (2) subjecting individuals seeking the services of the medical facility to unwanted personally-directed proselytizing within a 300 foot radius of the clinic (J.A.59),

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[6] Griffin has been found guilty of premeditated murder. Abortion Foe Gets Life Term in '93 Killing, Chicago Trib., March 6, 1994, C3.

[7] No question has been raised as to the procedural regularity of the hearing leading to the injunction. The trial court complied with the procedural guidelines established by this Court in Carroll v. Princess Anne, 393 U.S. 174 (1968).

where previously such proselytizing had threatened individuals and severely obstructed traffic approaching the clinic; (3) approaching, congregating, picketing, patrolling, demonstrating or using bullhorns or other sound amplification equipment within 300 feet of the residences of clinic personnel (J.A.59-60), in the wake of death threats directed to clinic personnel;[8] and (4) during surgery and recovery periods, singing, chanting, whistling, shouting, yelling, or using bullhorns, auto horns, sound amplification equipment or other sounds or images observable to or within earshot of patients inside the clinic. J.A.59.

Petitioners level several charges at these aspects of the trial court's injunction. First, they claim that the injunction is an illegal prior restraint. Second, Petitioners complain that the injunction is content or viewpoint-based, singling out anti-abortion speech for special regulation, while leaving other speakers free to engage in the activities in question. Third, Petitioners claim that the injunction is unnecessarily broad, banning more speech than necessary to maintain order and preserve the rights of others. Finally, Petitioners argue that the injunction is vague, claiming that it is difficult to know with certainty when unaffiliated anti-abortion demonstrators will be deemed "in concert" with the other defendants below.

None of these objections warrant interference with the trial court's good faith effort to uphold the rule of law when faced with the extreme facts here. Indeed, each of Petitioners' objections to the injunction overlook the critical distinction between a statute or regulation and an injunction.

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[8] For example, on one occasion "[a] doctor was followed as he left the clinic by a person associated with the respondents who communicated his anger to the doctor by pretending to shoot him from the adjoining vehicle." J.A.54.

The former imposes generally applicable speech restrictions on the entire community, while a court order is designed to prevent the continuation of an established pattern of unlawful behavior by specified individuals that threatens the rights of others with irreparable injury. Throughout their initial brief to this Court, Petitioners err by measuring this injunction by standards that have been developed for evaluating statutes rather than injunctions.

This Court has ruled that statutes and regulations seeking to restrict speech must: (1) apply equally to all;[9] (2) be based on a legislative finding of serious social need;[10] and (3) give precise notice of the scope of coverage to all.[11] When, however, as here, Petitioners have engaged in a pattern of lawless behavior that demonstrates contempt for the legal rights of others, courts are empowered to issue injunctions aimed solely at the offending individuals and those acting in concert with them in order to protect the rights of Respondents and third-persons from irreparable injury.[12] Unlike a statute, such an injunction (1) applies

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[9] The requirement of equal applicability is generally phrased as a requirement that content-based or viewpoint-based regulation be subject to strict scrutiny. See Perry Educ. Ass'n v. Perry Local Educs.' Ass'n, 460 U.S. 37, 45 (1983); Carey v. Brown, 447 U.S. 455, 461-62 (1980).

[10] See FCC v. Pacifica Found., 438 U.S. 726 (1978) (special treatment of indecent broadcast permissible in order to limit children's exposure to it); Brandenburg v. Ohio, 395 U.S. 444 (1969) (inducement to imminent lawless activity not protected by First Amendment).

[11] This in known as the "void-for-vagueness" doctrine. See Smith v. Goguen, 415 U.S. 566 (1974); Palmer v. Euclid, 402 U.S. 544 (1971).

[12] See, e.g., National Soc'y of Professional Eng'rs v. United States, 435 U.S. 679, 697 (1978) (having found a Sherman Act violation, trial (continued...)

only to a small segment of the public; (2) is based on judicial findings of fact made after an adversary hearing as to the particularized need for the restrictions; (3) must give actual notice only to the subjects of the injunction; and (4) by its nature is "permanent" only so long as it is not modified or vacated by the court.

The type of injunction at issue in this case, which limits threatening activity at certain times and places in order to safeguard the rights of Respondents and third persons should not be confused with the classic judicial prior restraints at issue in Near v. Minnesota, 283 U.S. 697 (1931), and New York Times v. United States, 403 U.S. 713 (1971). See also Alexander v. United States, 113 S. Ct. 2766, 2771 (1993) (explaining that prior restraints are orders that completely forbid certain communications in

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[12] (...continued)
court was "empowered to fashion appropriate restraints on the [defendant's] future activities both to avoid a recurrence of the violation and to eliminate its consequences"); Local Union No. 10, United Ass'n of Journeymen Plumbers v. Graham, 345 U.S. 192, 201 (1952) (injunction of picketing permissible when purpose of picketing conflicts with state "Right to Work" statute); International Bhd. of Teamsters, Local 309 v. Hanke, 339 U.S. 470 (1949) (sustaining injunction of picketing for sole purpose of compelling employer to adopt a union shop); Building Serv. Employers Local 262 v. Gazzam, 339 U.S. 532, 540-41 (1949) (sustaining injunction of picketing for sole purpose of compelling employer to coerce his employees to join picketing union); Giboney v. Empire Storage & Ice Co., 336 U.S. 490 (1948) (sustaining injunction of picketing carried on for purpose of coercing employer to violate state antitrust law); Carpenters & Joiners Union, Local 213 v. Ritter's Cafe, 315 U.S. 722 (1941) (sustaining injunction of union from picketing cafe having no business connection with place where industrial dispute centered); Milk Wagon Drivers Union, Local 753 v. Meadowmoor Dairies, 312 U.S. 287 (1941) (sustaining injunction when peaceful picketing so enmeshed in background of violence that it was part of a pattern of violence).

advance of the time that they are to occur). When a trial court enjoins future speech in an effort to suppress a substantive message, this Court has properly treated the activity with great hostility. See Vance v. Universal Amusement Co., 445 U.S. 308 (1980) (per curiam); Vincent Blasi, Toward a Theory of Prior Restraint: The Central Linkage, 66 Minn. L. Rev. 11 (1981). But where, as here, an injunction is not aimed at suppressing speech because of its content, but is intended to prevent continuation of a pattern of improper activity that threatens the rights of Respondents, their employees and the public with irreparable injury, this Court has recognized the legitimacy of such judicial regulation. See discussion supra at pp. 8-9 & n.12 (citing cases).

In restricting the time, place and manner of Petitioners' activities, the injunction here focuses not on what they say or advocate, but on what they do at the clinic and at residences of clinic employees.[13] Each of the injunction's provisions is "justified without reference to the content of the regulated speech." City of Renton v. Playtime Theatres, 475 U.S. 41, 48 (1986). See also Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989) ("A regulation that serves purposes unrelated to the content of expression is deemed neutral, even if it has an incidental effect on some speakers or messages but not others"). Because of their established history of lawlessness and repeated

[13] Perry Educ. Ass'n v. Perry Local Educs.' Ass'n, 460 U.S. 37 (1983), sets out the requirements for evaluating regulatory and statutory restrictions on the time, place and manner of speech. See also United States v. O'Brien, 391 U.S. 367 (1968). However, the proper test for injunctions may have a different focus. For example, this Court has indicated that an injunction, even one that may impinge on speech, "must be judged [by] whether the relief represents a reasonable method of eliminating the consequences of the illegal activity." National Soc'y of Professional Eng'rs, 435 U.S. at 698.

violations of the prior injunction entered by the trial court, Petitioners and those acting in concert with them are enjoined from talking about anything -- including the weather or the Dolphins -- within the time, place and manner restrictions set out in the injunction. A precisely targeted injunction will always be in some sense one-sided because it is not, and should not by its nature be, aimed at the general public.[14] Indeed, if this Court adopted the analysis of the Eleventh Circuit Court of Appeals in Cheffer v. McGregor, Cert. Pet. App. C, i.e., that the injunction at issue here was content-based simply because it applied only to defendants, id. at C-11-12, every injunction that limited its applicability to comply with the dictates of Fed. R. Civ. P. 65 would be a content-based restriction.

It is Petitioners and those acting in concert with them whom the trial court found, after an extensive adversary hearing, were engaged in trespassing, blocking, disrupting, intimidating and threatening conduct directed at the Respondents, their patients and employees. Injunctive relief is properly aimed at this small segment of the general public, whose interests were fully represented before the trial court and whose unlawful pattern of behavior, continuing after a first injunction, cries out for special governmental attention. Cf. United States v. Paradise, 480 U.S. 149 (1987) (approving injunction ordering one-black-for-one-white promotion in light of egregious and continuing discrimination). Indeed, such relief is part and parcel of the judiciary's equitable power to craft an

[14] Petitioners make much of Judge McGregor's observation that the injunction here "did not pertain to those on the other side of the issue." J.A.71; Pet. Br. at 10-11. However, Judge McGregor's statement is not probative of whether the injunction is content-based. Instead, Judge McGregor was simply acknowledging that the nature of an injunction is to regulate only the behavior of a certain group of people.

appropriate remedy to address proven wrongs. As Justice Stevens observed in Hirsh v. City of Atlanta, 495 U.S. 927 (1990) (denial of stay) (Stevens, J., concurring), "[i]t is entirely proper . . . to draw a distinction between injunctive relief imposing time, place, and manner restrictions upon a class of persons who have persistently and repeatedly engaged in unlawful conduct, on the one hand, and an injunction that constitutes a naked prior restraint against a proposed march by a group that did not have a similar history of illegal conduct in the jurisdiction where the march was scheduled." Id. at 927 (citations omitted). See also Chicago Teachers' Union Local No. 1 v. Hudson, 475 U.S. 292, 309 n.22 (1986) ("The judicial remedy for a proven violation of law will often include commands that the law does not impose on the community at large").

Similarly, Petitioners' claim that the prophylactic restrictions imposed by the injunction are too broad when measured by ordinary standards governing statutory restrictions on speech overlooks the fact that the trial court found, after a full adversary hearing, that the restrictions were necessary in the factual context of this case to deal with the climate of terror created by the pattern of lawlessness and threatening behavior, both locally and nationally, indulged in by Petitioners and other defendants below. As this Court noted in evaluating a time, place and manner restriction in Grayned v. City of Rockford, 408 U.S. 104 (1972), "[t]he crucial question is whether the manner of expression is basically incompatible with the normal activity of a particular place at a particular time." Id. at 116. Here, the hearing conducted below allowed for a full evaluation of the specific circumstances. The resulting injunction balancing the competing interests involved here is well within the scope of permissible restrictions upheld by this Court in contexts where the regulations at issue -- statutes and ordinances -- were of

much broader applicability. See, e.g., Burson v. Freeman, 112 S.Ct. 1846 (1992) (upholding clear zone around polling places); Boos v. Barry, 485 U.S. 312 (1988) (upholding ordinance prohibiting congregating within 500 feet of foreign embassy); City of Renton v. Playtime Theatres, 475 U.S. 41 (1986) (upholding prohibition on adult theaters within 1000 feet of residential zones, family dwellings, churches, parks or schools); Cox v. Louisiana, 379 U.S. 536 (1965) (upholding ban on picketing within 100 feet of courthouse). Further, unlike a statute, even a "permanent" injunction may be modified or vacated by the court on its own motion, or on the motion of the parties. See Fla. R. Civ. P. 1.610(d); Fed. R. Civ. P. 65.

Petitioners' concern that it is difficult to identify persons "acting in concert" with Petitioners for the purpose of applying the injunction also misunderstands the order's purpose. Used in the context of a specific injunction, the term "in concert" requires a degree of participation either directly or through knowing assistance in the pattern of unlawful activity engaged in by the Petitioners and other defendants below. The term does not connote mere opposition to abortion, Roe v. Operation Rescue, 919 F.2d 857 (3d Cir. 1990) (nonparty in concert when protestor had knowledge of injunction and actively violated its provisions), and anti-abortion activists not acting in concert with Petitioners have nothing to fear from the injunction. See Regal Knitwear Co. v. NLRB, 324 U.S. 9, 13 (1945) (courts "may not grant an injunction so broad as to make punishable the conduct of persons who act independently and whose rights have not been adjudged according to law"). Thus, the injunction here clearly identifies its targets, providing a clear, narrowly tailored standard to

govern its applicability.[15]

Finally, the injunction's restrictions on loud noise and images visible from the clinic during hours when surgical operations are being conducted are amply supported in the trial court's findings. J.A.54. Similar restrictions of much broader applicability have been routinely permitted around hospitals and other medical facilities in order to protect patients' health and to permit medical facilities to engage in "normal activity." See discussion at Point II.B, infra. Further, ample alternative channels for this type of communication are available when patients arrive at and depart from the clinic, particularly since display of images by Petitioners is not generally restricted within the 300 foot zone and only the extreme amplitude of singing and other noise is regulated. See Cert. Pet. App. at A-19.

The question in this case is not, therefore, whether the injunction would be valid if it were reincarnated as a statute. Rather, it is whether the trial court's factual finding that, in the specific context of this case, Petitioners' past record of contempt for the legal rights of others, including repeated violations of an earlier injunction, when coupled with the climate of fear intentionally created by threats in the wake of Dr. Gunn's murder, justified the

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[15] If municipal authorities nevertheless misconstrue the meaning of "in concert," Petitioners' quarrel is with those authorities rather than with the terms of the injunction. See Cheffer, Cert. Pet. App. C-20-21 (Paine, J., dissenting) (suggesting that pro-life individual not acting "in concert" with Petitioners would be entitled to an order prohibiting enforcement of injunction against her). See also Zenith Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100 (1969), rev'd on other grounds, 401 U.S. 321 (1971) (for a non-party to be found to be in active concert or participation with a named, enjoined party, she must have an opportunity to answer the allegation).

prophylactic relief contained in the injunction.[16]

As amici will demonstrate in Point II, on the facts of this case, the clear answer is "yes". The ban on potentially disruptive activity with 36 feet of the clinic was clearly needed to prevent Petitioners from continuing to mass in close proximity to the clinic in an often successful effort to blockade it. The time, place and manner restrictions on loud noises and images were necessary to avoid frightening and aggravating women undergoing sensitive medical treatment within the clinic's doors. The ban on continued unwanted proselytizing within 300 feet of the clinic was clearly needed to ensure the public safety by preventing obstruction of traffic around the clinic and to protect women about to undergo a surgical procedure from unwanted face-to-face confrontations which adversely affected their physical and mental health. The ban on residential picketing within 300 feet of a clinic employee's home was clearly necessary to provide a cordon of safety for individuals who had been threatened in the wake of the assassination of Dr. Gunn. While similar restrictions on communicative activity might not be permissible in all places at all times -- especially if they were imposed by a statute of general applicability -- in the specific context of this time and this place, this injunction provided the minimum response consistent with continued commitment to the rule of law.

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[16] The role of a court under such circumstances is not to issue a statute-like directive of general applicability or to reiterate existing civil and criminal prohibitions. Instead, the judicial branch has a valuable role to play in addressing unique, specific, emergency situations that threaten the rule of law and the public safety. See American Steel Foundries v. Tri-City Cent. Trades Council, 257 U.S. 184, 206 (1921) (volatile, sometimes violent picketing "is a case for the flexible remedial power of a court of equity, which may try one mode of restraint, and, if it fails or proves too drastic, may change it").

II. THE SUBSTANTIAL INTERESTS INFRINGED BY PETITIONERS' ACTIVITIES JUSTIFY THE INJUNCTION ENTERED BELOW

A. The Reproductive Rights Of Women Constitute Significant And Compelling Government Interests

The injunction at issue here meets the tests of either Perry Educ. Ass'n v. Perry Local Educs.' Ass'n, 460 U.S. 37 (1983), or United States v. O'Brien, 391 U.S. 367 (1968), because it is narrowly tailored to serve several significant governmental interests, including the government's interests in protecting women's fundamental right of privacy.[17]

As the Florida Supreme Court recognized, the state interests here include protection of a "woman's freedom to seek lawful medical or counseling services in connection with her pregnancy." Cert. Pet. App. A-15. Women's right to abortion is protected under both the federal and Florida constitutions. In Planned Parenthood v. Casey, 112 S.Ct. 2791 (1992), this Court explained that the right to abortion is essential because "the liberty of the woman is at stake in a sense unique to the human condition and so unique to the law. The mother who carries a child to full term is subject to anxieties, to physical constraints, to pain that only she must bear." Id. at 2807.

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[17] As detailed in Point I, supra, the injunction is content-neutral because although it regulates when, where, and how defendants may speak, it does not regulate what they may say. In practice, there is little if any difference between O'Brien and the time, place and manner test outlined in Perry. See Clark v. Community for Creative Non-Violence, 468 U.S. 288, 298 (1984).

Women's right to reproductive privacy is also strongly protected by Article I, Section 23 of the Florida Constitution: "Unlike the federal constitution, . . . which allows intrusion based on a 'significant' state interest, the Florida Constitution requires a 'compelling' state interest in all cases where the right to privacy is implicated." In re T.W., 551 So.2d 1186, 1195 (Fla. 1989).

Because this state interest is a constitutional one, it is different in character than most state interests supporting restrictions on speech.[18] Here, the injunction is necessary to "ensure that the constitutional rights of one group are not sacrificed in the interest of the constitutional rights of another." New York State Nat'l Org. for Women v. Terry, 704 F. Supp. 1247 (S.D.N.Y.), aff'd as modified, 886 F.2d 1339, 1363 (2d Cir. 1989), cert. denied, 495 U.S. 947 (1990); see Pro-Choice Network v. Project Rescue, 799 F. Supp. 1417, 1433 (W.D.N.Y. 1992). When competing constitutional interests are at stake, this Court is more likely to uphold speech restrictions. Significantly, Burson v. Freeman, 112 S. Ct. 1846 (1992), even upheld a content-based restriction, balancing the right to free speech against the right to vote to uphold a ban on all political speech within 100 feet of a polling place.[19] Id. at 1858.

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[18] Petitioners' contention that "speech related to abortion is political speech," Pet. Br. at 15, is not supported by citation to any authority. Moreover, their quotation from City of Los Angeles v. Taxpayers for Vincent, 466 U.S. 789 (1984), is misleading. In the quotation "An assertion that . . . abortion is Murder, that every woman has the 'Right to Choose' . . . is just as strong as [political speech]," Petitioners omit in the second ellipsis the qualifying language "may have a claim" that such speech is comparable to political speech. Taxpayers for Vincent, 466 U.S. at 816 (emphasis added).

[19] Although the right to vote is arguably given more protection than

(continued...)

Declaring that the question of whether the boundary could be "somewhat tighter" was not a "question of constitutional dimension," the Burson Court noted that it "takes approximately 15 seconds to walk 75 feet." Id. at 1857. In contrast, here the zones around the clinic and residences are based on detailed facts adduced at a hearing. The 36 foot buffer zone around the clinic is approximately one-third of the zone in Burson; the 300 foot anti-harassment zone around the clinic and buffer zone around the residences, although larger, is not significantly so. If it takes 15 seconds to walk 75 feet, it takes only 60 seconds to walk 300 feet, a distance that is even less significant in view of the fact that the principal access to the clinic is by car. J.A.51.

The only case Petitioners offer to argue that the First Amendment is primary in this context is Mississippi Women's Medical Clinic v. McMillan, 866 F.2d 788 (5th Cir. 1989), which is inapposite because women's right to choose abortion was not directly at issue there. Instead, in McMillan the asserted interests were "the privacy interests of women who seek to have abortions . . . while being insulated from the protestors advocacy," 866 F.2d at 795

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[19] (...continued)
the right to abortion, Reynolds v. Sims, 377 U.S. 533, 555 (1964) (voting is the "essence of a democratic society"), the restriction in Burson was undeniably greater than the restrictions here. Not only was the restriction in Burson content-based but it was contained in a statute and thus, unlike this injunction, not tailored to particular circumstances or subject to modification. Moreover, the statute in Burson was upheld despite the fact that it was based on only a "potential" problem. 112 S.Ct. at 1857. Because the law had been enacted so long ago, there was no evidence in the record that a 100-foot boundary was actually needed. Finally, it is worth noting in this regard that neither the right to vote nor the right to abortion are explicitly protected by the Constitution.

(emphasis added), more akin to a "right to be let alone." The plaintiffs in McMillan did not seek an injunction prohibiting blockading or trespassing, but instead sought only an injunction prohibiting picketing within 500 feet of the clinic. Here, the sections of the injunction that Petitioners challenge are necessary concomitants to ensure that Sections (1) and (2) which forbid, inter alia, trespassing and blockading, have real force. Sections (3) through (9) of the injunction are necessary precisely because Sections (1) and (2) are necessary.

Petitioners are also mistaken in asserting, Pet. Br. at 16, that Casey provides support for their arguments that the injunction is unduly restrictive. The plurality was careful to specify that the state regulations upheld in Casey did not have as their purpose to place "a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus." 112 S. Ct. at 2820. In fact, the plurality cautioned that a state regulation that had such a purpose or effect would be invalid "because the means chosen by the State to further the interest in potential life must be calculated to inform the woman's free choice, not hinder it." Id. Thus, the informed consent regulations upheld in Casey would be unconstitutional if the State had instituted them for the purpose of delay rather than to "insure an informed choice." Id. at 2824.

Here, as in the cases described in the Appendices hereto, Petitioners' goal is to close down medical clinics, thereby depriving women of their right to choose abortion. In fact, one of the Petitioners, Ed Martin, has stated that he intends to prevent women from obtaining abortions by closing all abortion clinics in the Central Florida area. Cert. Pet. App. A-2-4. In that connection, Martin issued a press release which states that "the spirit of Wichita comes to Florida." J.A.6-7. In Wichita, of course, Operation

Rescue "succeeded in its avowed intent to shut [the clinics] down." Women's Health Care Servs. v. Operation Rescue, 773 F. Supp. 258, 262 (D. Kan. 1991), app. pending, No. 91-3250 (10th Cir. Oct. 11, 1991). See also New York State Nat'l Org. for Women v. Terry, 704 F. Supp. 1247, 1261-62 (S.D.N.Y.), aff'd as modified, 886 F.2d 1339 (2d Cir. 1989), cert. denied, 495 U.S. 947 (1990) ("defendants' activities have the intended effect of shutting down clinics, which in turn causes delay or an absolute loss of a woman's ability to obtain an abortion").

B. The Safety And Health Interests Of Patients Are Legitimate Bases For The Injunction's Restrictions On Blockades, Harassment And Related Activities Near Respondent Clinics

Blockades and related activities have a profound and damaging impact on clinic patients. Not only are women prevented or deterred from exercising their right to choose abortion, see Point II.A., supra, but their health and safety are jeopardized. The trial court below found, that "as a result of . . . having to run such a gauntlet," clinic patients manifested a higher level of anxiety, hypertension and stress, increasing the risk of surgical procedures and inhibiting recuperation. In addition, some patients turned away to avoid the crowd, delaying their procedures and thereby increasing their risk. Cert. Pet. App. B-4-5. Courts have made similar findings in other cases.[20]

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[20] E.g., Portland Feminist Women's Health Ctr. v. Advocates for Life, 859 F.2d at 683, 686 (finding that defendants' conduct impeded provision of medical care, raised risk of medical complications and injury, and blocked ambulance personnel in an emergency); Pro-Choice Network v. Project Rescue, 799 F. Supp. at 1427 (increased stress and anxiety caused by protests outside clinics can cause elevated blood pressure, hyperventilation and other health risks).

Moreover, many clinics also provide a wide range of other health services. Feminist Majority Foundation, supra, at 5-7. Because of clinic blockades, women have been denied prompt access to necessary health care for conditions as diverse as miscarriage of a wanted pregnancy, toxemia, HIV infection, and cancer. Id.; NARAL, supra, at 6-7. See Bering v. SHARE, 721 P.2d 918, 923 (Wash. 1986), cert. dismissed, 479 U.S. 1050 (1987).

Faced with evidence of these dangerous and disruptive tactics, numerous courts have enjoined anti-abortion forces from engaging in activities such as obstructing ingress and egress from clinics, making noise at high volumes, and approaching patients and staff in the clinic vicinity.[21] Many of these injunctions closely resemble provisions of the injunction being challenged in the current case.

Assuming that the correct standard for assessing the constitutionality of such injunctions is the test for reasonable time, place and manner restrictions, the injunction in this case easily passes muster.[22] See, e.g., Perry Educ. Ass'n v. Perry Legal Educs.' Ass'n, 460 U.S. 37 (1983). The injunction makes no reference to the content of the restricted communications and is therefore content-neutral. See Terry, 886 F.2d at 1363. Significant government interests, including the interest in safeguarding patients' health and safety, are at stake. See Northeast Women's Ctr. v. McMonagle, 939 F.2d 57, 63-64 (3d Cir. 1991) (patient safety is a legitimate government interest); Portland Feminist Women's Health Ctr., 859 F.2d at 686

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[21] See cases described in Appendices I and II hereto.

[22] As discussed at Point I, supra, a different focus may be appropriate when injunctions, as opposed to statutes, are being evaluated. See Nat'l Soc'y of Professional Eng'rs, 435 U.S. at 697 (1978).

(injunction advances significant government interest in preventing interference that may endanger the health and safety of patients). Ample alternative channels of communication exist for the Petitioners to convey their message. Cert. Pet. App. A-19. Further, the restrictions are narrowly tailored, for the reasons discussed below.

In evaluating the reasonableness of the restrictions imposed by the injunction, it is essential to consider the factual circumstances in the present case, including the history of past anti-abortion conduct, the unique functions of a medical facility, and the need to protect patient health and safety. See Northeast Women's Ctr., 939 F.2d at 64. The record in this case is replete with evidence of disruptive, threatening and violent behavior by anti-abortion forces at the Respondent clinics. Cert. Pet. App. B-1-5. Moreover, because the nature of the institution being protected dictates what constitutes a reasonable time, place and manner restriction, Grayned, 408 U.S. at 116, a medical facility that provides abortions is entitled, by virtue of the fact that it performs surgery, to protections against noise and disruption. Pro-Choice Network, 799 F. Supp. at 1433. See Medlin v. Palmer, 874 F.2d 1085, 1090 (5th Cir. 1989). As Justice Blackmun explained in indicating that an adverse effect on patient well-being can support a prohibition on union solicitation at a medical facility,

> [h]ospitals, after all, are not factories or mines or assembly plants. They are hospitals, where human ailments are treated, where patients and relatives alike are under emotional strain and worry, where pleasing and comforting patients are principal facets of the day's activity, and where the patient and his family . . . need a restful, uncluttered, relaxing, and helpful atmosphere.

Beth Israel Hospital v. NLRB, 437 U.S. 483, 507-8 (1978).

In addition, patients seeking to enter an abortion clinic are in a unique circumstance: they are a captive audience, unable to avoid exposure to unwanted and intrusive contacts from those occupying the area through which they must pass to gain entrance to that clinic. See generally Cert. Pet. App. A-17-18; Pro-Choice Network, 799 F. Supp. at 1435; Note, Too Close for Comfort, 101 Harv. L. Rev. 1856, 1864 (1988). As the trial court noted, these contacts pose a direct, serious threat to the patients' health. J.A.54.

A narrower set of restrictions on anti-abortion behavior in the vicinity of the Respondent clinics would not adequately serve the government interests at stake. Here, there were numerous violations of the earlier, narrower injunction, proving the necessity of a broader injunction. J.A.50-51. Anti-abortion picketing in the immediate vicinity of a clinic frequently degenerates into physical obstruction and harassment of patients and clinic staff, and other illegal and dangerous behavior. This is partly due to the fact that the sheer number of demonstrators prevents free ingress to and egress from the clinic, and is partly due to the fact that groups and individuals committed to shutting down abortion clinics are typically willing to employ a broad array of tactics, both legal and illegal. See, e.g., Women's Health Care Servs. v. Operation Rescue, 773 F. Supp. at 262 (describing tortious and criminal actions deliberately undertaken by defendants); Roe v. Operation Rescue, 710 F. Supp. at 588 (finding defendants willing to commit illegal acts repeatedly).

Even if the behavior of anti-abortion protesters could be limited to picketing and speech as traditionally defined, it is still reasonable to restrict the time, place and manner of that activity. Heffron v. International Soc'y for Krishna

Consciousness, 452 U.S. 640 (1981). Close proximity to hostile speakers is inherently extremely stressful. See Note, supra, at 1864-66. While the impact on the listener is not ordinarily a sufficient reason to restrict speech, Cohen v. California, 403 U.S. 15, 21 (1971), the situation of patients about to undergo surgery is unique. For such patients, stress is not merely unpleasant -- it is a serious health threat. Note, supra, at 1864-66. Thus, a restriction that is narrowly tailored to serve the government interest in patient health and safety must go beyond merely prohibiting illegal activity such as physical obstruction and assault in the vicinity of clinics; it must also prohibit unwanted contact and communication with patients as they approach or leave the clinic.

C. The Safety Of The General Public Is A Significant Government Interest Justifying The Injunction

The injunction at issue here was necessary to maintain public safety and the perception of public safety.[23] Cert. Pet. App. A-15. This Court has held that "a group of demonstrators could not insist upon the right to cordon off a street, or entrance to a public or private building, and allow no one to pass who did not agree to listen to their exhortations." Cox v. Louisiana, 379 U.S. 536, 554-55

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[23] Although Petitioners claim that the government interest in public safety and order is well protected by existing laws, Pet. Br. at 17, that assertion is ludicrous in light of the fact that even the first injunction was found to be insufficient to protect public order. Petitioners' citation to Texas v. Johnson in this regard is inapposite. This Court noted in Johnson, 491 U.S. 397, 410-12 (1989), that Texas's asserted interests in its flag desecration law were already served by other laws such as laws prohibiting breaches of the peace, trespass, disorderly conduct, and arson. However, Johnson involved a statute, not an injunction. To accept Petitioners' argument here would lead to the absurd conclusion that an injunction could never restrain conduct that is already unlawful.

(1965). Similarly, in Heffron this Court upheld a rule that impinged on religious practices at a state fair because the rule was necessary for the "demands of safety." 452 U.S. at 651. Here, the governmental interest in safety is of a different order of magnitude. The state interests here -- preventing lawless violence, maintaining the rule of law, and ensuring safe flow of traffic off of a highway exit -- are much greater than the interests in "avoiding congestion and maintaining the orderly movement of fair patrons," 452 U.S. at 652, found to be substantial in Heffron. See also Terry, 886 F.2d at 1364 (noting "significant governmental interests in maintaining public safety").

D. The Safety And Privacy Interests Of Health Care Providers Are Legitimate Bases For The Injunction's Restriction On Residential Picketing And Related Activities

Individual health care providers are also the targets of widespread violence and harassment by anti-abortion extremists throughout the country, including in Florida. Among clinics responding to a recent national survey, 21 percent reported that clinic staff had received death threats during the first seven months of 1993, and 15 percent reported that clinic personnel had been stalked. Feminist Majority Foundation, supra, at 2. Another survey, covering the first three and a half months of 1993, recorded 90 incidents of stalking, which was defined as persistent following, threatening, and harassing of an abortion provider, staff member or patient away from the clinic. National Abortion Federation, supra.

Threats, harassment, and intimidation directed at health care personnel are part of a broad campaign of anti-abortion violence, which includes bombings, arson, vandalism, blockades, invasions and chemical attacks against facilities

that perform abortions. See generally Feminist Majority Foundation, supra; National Abortion Federation, supra. In the ultimate evidence of the danger that anti-abortion fanatics pose to individual health care providers, two physicians have been shot, one fatally, during the past year. See Abortion Foe Who Shot A Doctor Is Convicted Of Attempted Murder, N.Y. Times, March 26, 1994, at A7 (describing conviction of Rachelle Shannon for attempted murder of Dr. George Tiller, on Aug. 19, 1993, in Wichita, Kansas); Larry Rohter, Doctor is Slain During Protests Over Abortions, N.Y. Times, March 11, 1993, at A1 (describing murder of Dr. Gunn in Pensacola, Florida, on March 10, 1993).

Clinic owners, physicians, and employees are particularly vulnerable to anti-abortion violence when they are outside the clinic building. Throughout the country, clinic staff and their families have been stalked as they travel to their work, homes, churches, malls, and grocery stores. Feminist Majority Foundation, supra, at 3. Such settings may lack the sophisticated security precautions that now characterize many abortion clinics. See Feminist Majority Foundation, supra, at 4 (describing clinic security). As a result, anti-abortion activity at a health care provider's home may pose a greater risk to the provider's safety than similar activity at the clinic itself.

Reported incidents of anti-abortion activity directed at clinic doctors and employees in their homes include the following: three rounds of gunfire shot through the front window of a physician's home while he and his family were there, Feminist Majority Foundation, supra, at 3; clinic staff receiving threatening mail at home, National Clinic Defense Project, supra, at 7; a doctor blockaded in his home by a crowd of individuals and vehicles that converged on his yard and driveway. Id. at 2. In one case the tactics

of anti-abortion protestors included "groups as large as 30 demonstrat[ing] at the gate of [the doctor's] home, congregating in pre-dawn hours, shouting and honking car horns, and attempting to block the departure of the doctor and her family members," vandalizing the doctor's house and garage, and stalking the doctor and her family. Fargo v. Women's Health Org., 488 N.W.2d 401, 405 (N.D. 1992), aff'd on appeal after remand, 502 N.W.2d 536 (N.D. 1993).[24]

The record in the present case demonstrates that clinic personnel have been subjected to a pattern of threats and harassment at their homes and elsewhere. Protestors have approached the private residences or temporary lodging places of clinic employees on multiple occasions, communicating directly with the occupants (including minor children at home alone), picketing, shouting at passers-by, ringing doorbells of neighbors, and providing literature identifying the clinic employee as a "baby killer." J.A.53. Further, a staff physician attempting to enter the clinic parking lot was forced to stop his vehicle and remain stopped while demonstrators yelled and screamed "Baby killer" and "We don't want you here in Melbourne" at him, J.A.54; a staff physician was temporarily prevented from leaving a motel where he was staying while protestors

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[24] See also Northeast Women's Ctr., 939 F.2d at 60, 66 (defendants blocked doctor's driveway and prevented his leaving for work for a period of time; demonstrations frightened clinic employees' children at their homes); Klebanoff v. McMonagle, 552 A.2d 677, 679-80 (Pa. Super. Ct. 1988), app. denied, 563 A.2d 888 (Pa. 1989) ("devastating effect" of repeated demonstrations created "general chaos" for doctor's family and their neighbors); Kaplan v. Prolife Action League, 431 S.E.2d 828, 830-31 (N.C. Ct. App. 1993) (at least twelve instances of picketing at home of doctor and family, including threatening conduct), rev. denied, 436 S.E.2d 379 (N.C. 1993), pet. for cert. filed, 62 U.S.L.W. 3511 (U.S. Jan. 18, 1994) (No. 93-1159).

entered the motel lobby yelling "child murderer" and "baby killer," J.A.53-54; staff have been followed in a stalking manner when they leave the clinic, J.A.55; and a doctor was followed from the clinic by someone who pretended to shoot him. J.A.54.

In addition to the terror, injury, and even death inflicted on individual clinic personnel, the violence and harassment directed at clinic owners, doctors and employees has contributed to the lack of availability of abortion in the United States. Only 17 percent of counties in this country have one or more provider of legal abortions. Stanley K. Henshaw and Jennifer van Vort, Abortion Services in the United States, 1987 and 1988, 22 Fam. Planning Perspectives 102, 106-7 (May/June 1990). Almost one-fourth of clinics responding to a national survey reported that a staff member had quit as a result of anti-abortion incidents; and one-half of the clinics that experienced a staff member's resignation had difficulty finding a replacement. Feminist Majority Foundation, supra, at 5. In this case, the trial court below found that a physician terminated his clinic employment because of anti-abortion demonstrations and activities. Cert. Pet. App. B-5. See also Northeast Women's Ctr., 939 F.2d at 66 (harassment of clinic employees at their homes partly responsible for two employees' resignations). In response to this nationwide campaign of terror, numerous courts, including the court below, have entered injunctions designed to restrict picketing and related activity at or near clinic employees' homes. See, e.g., Dayton Women's Health Ctr. v. Enix, 589 N.E.2d 121, 127 (Ohio Ct. App. 1991), cert. denied, 112 S. Ct. 3033 (1992); Welsh v. Johnson, 508 N.W.2d 212 (Minn. Ct. App. 1993).

To determine the constitutionality of such injunctions, this Court's decision in Frisby v. Schultz, 487 U.S. 474

(1988), provides useful guidance. Under that decision, restrictions on residential picketing are permissible if they "'are content-neutral, are narrowly tailored to serve a significant government interest, and leave open ample alternative channels of communication.'" Id. at 481 (quoting Perry, 460 U.S. at 45).

The limits on residential picketing and related activity that were established by the trial court below meet all these criteria. For the reasons described above, the injunction is not content-based. See discussion, Point I, supra. The lower court's injunction is also narrowly tailored to serve significant government interests, including both the government interest in "protecting the well-being, tranquility and privacy of the home," as recognized in Frisby, 487 U.S. at 484-85, and the government interest in safeguarding the physical safety of health care providers, which is seriously threatened by anti-abortion extremists' activities. Finally, for the reasons explained by the Supreme Court of Florida in its opinion below, the injunction leaves open ample alternative means of communication. Cert. Pet. App. at A-19.

Applying the Frisby test, the U.S. Court of Appeals for the Third Circuit correctly found that a residential picketing injunction virtually identical to Paragraph 6 of the injunction in the current case was permissible. Northeast Women's Ctr., 939 F.2d at 65-67. Similarly, in Kaplan v. Prolife Action League, 431 S.E. 828, 841-49 (1993), an injunction prohibiting "picketing, parading, marching, or demonstrating anywhere within 300 feet of the center line" of the street where the affected doctor lived was upheld under the Frisby standard. See also Murray v. Lawson, 624 A.2d 3 (N.J. Super. Ct. App. Div.), cert. granted, 627 A.2d 1149 (N.J. 1993) (upholding injunction forbidding picketing within 300 feet of doctor's residence).

It should be noted that Frisby v. Schultz involved a challenge to residential picketing legislation.[25] By contrast, in the present case, "we are dealing with a remedial injunction and not an ordinance of general application." Northeast Women's Ctr., 939 F.2d at 67. An injunction such as the one at issue here may be permissible even if an identical statute would not pass constitutional muster, because factors such as "narrowly tailored" and "significant government interest" must be evaluated in light of the specific circumstances that gave rise to the injunction. The trial court properly evaluated and balanced such factors in entering the injunction here.

CONCLUSION

For the foregoing reasons, the decision of the Florida Supreme Court should be affirmed.

Respectfully submitted,

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[25] Such legislation is not uncommon. See, e.g., Garcia v. Gray, 507 F.2d 539 (10th Cir. 1974), cert. denied, 421 U.S. 971 (1975) (upholding local picketing ordinance); Town of Barrington v. Blake, 586 A.2d 1015 (R.I. 1990) (upholding local picketing ordinance).

APPENDIX I

APPENDIX I(A):

Reported Federal Cases Issuing or Upholding Similar Injunctions*

Aradia Women's Health Ctr. v. Operation Rescue, No. C88-1539R (W.D. Wash. Jan 10, 1989), aff'd, 929 F.2d 530 (9th Cir. 1991) (enjoining defendants from blocking any ingress to or egress from the facility; congregating or standing within a 25 foot corridor extending from the clinic to the sidewalk; physically harassing anyone entering or exiting the facility; making any noise that substantially interferes with the provision of medical services)

Cousins v. Terry, 721 F. Supp. 426 (N.D.N.Y. 1989) (enjoining defendants and those in concert from obstructing ingress or egress from any facility in county at which abortions are performed; physically abusing or tortiously harassing anyone entering, leaving, working at, or using any clinic services; permitting non-threatening sidewalk counseling by not more than two people for every person they are seeking to counsel, provided person does not object)

National Org. for Women v. Operation Rescue, 726 F. Supp. 1483 (E.D. Va. 1989), aff'd, 914 F.2d 582 (4th Cir. 1990), rev'd in part, vacated in part and remanded sub nom. Bray v. Alexandria Women's Health Clinic, 113 S.Ct. 753 (enjoining defendants and those in concert from trespassing, blockading, impeding or obstructing access to or egress from the facility)

New York State Nat'l Org. for Women v. Terry, 697 F. Supp. 1324 (S.D.N.Y. 1988) and 704 F. Supp. 1247 (S.D.N.Y.), appeals consolidated and aff'd as modified,

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* Cases are listed in alphabetical order.

886 F.2d 1339 (2d Cir. 1989), cert. denied, 495 U.S. 947 (1990) (enjoining defendants and those in concert from trespassing or blocking ingress or egress from clinics; physically abusing or tortiously harassing persons entering or leaving clinics; permitting nonthreatening sidewalk counselling done by no more than two people with each person sought to be counseled, provided person does not object)

Northeast Women's Ctr. v. McMonagle, 745 F. Supp. 1082 (E.D. Pa.), modified, 749 F. Supp. 695 (E.D. Pa. 1990), aff'd in part, remanded in part, 939 F.2d 57 (3d Cir. 1991) (enjoining defendants from blocking clinic entrance; singing, chanting, or using sound amplification audible to patients inside the clinic, or displaying images visible to patients during times of surgical procedures and recovery periods; having an information table closer than 500 feet from the property line of the clinic during times of surgical procedures and recovery periods, except that there may be one table in a specified place, staffed by only two people, with one sign; picketing within 500 feet of the property line, except that 6 people may picket peacefully in a designated spot at all times)

NOW v. Operation Rescue, 726 F. Supp. 300 (D.D.C. 1989), perm. injunction granted, 747 F. Supp. 760 (D.D.C. 1990), appeal pending, Nos. 91-7001, 91-7006 (D.C. Cir.), modifying injunction, 816 F. Supp. 729 (D.D.C. 1993) (enjoining defendants and those in concert from trespassing on, blockading, impeding or obstructing access to or egress from clinic, and directing others to do so)

New York v. Operation Rescue-National, Civ. 92-4884 (S.D.N.Y July 13, 1992), aff'd sub nom. United States v. Terry, 802 F. Supp. 1094 (S.D.N.Y. 1993) (enjoining defendants and those in concert from demonstrating within

15 feet of door, or 15 feet within any person entering or leaving clinic, except that non-threatening sidewalk counseling is allowed by no more than two people per person they want to counsel; physically abusing, or harassing any person entering or leaving; making noise that endangers the health or safety of patients)

Planned Parenthood Ass'n v. Holy Angels Catholic Church, 765 F. Supp. 617 (N.D. Cal. 1991) (enjoining defendants and those in concert from blocking ingress to or egress from clinic or parking area; demonstrating, picketing, distributing literature, or counseling within 25 feet of entrance; approaching any person once such person has stated that s/he does not wish to be approached; shouting, chanting, or otherwise producing loud noises which can be heard within clinic; touching, threatening or shouting at person entering or leaving clinic)

Portland Feminist Women's Health Ctr. v. Advocates for Life, 712 F. Supp. 165 (D. Or.), aff'd as modified, 859 F.2d 681 (9th Cir. 1988) (affirming injunction enjoining defendants and those in concert from yelling, shouting, chanting, or making any noise that substantially interferes with the provision of medical services; obstructing access, demonstrating or handing out literature within the "free zone" of 12 1/2 feet of clinic)

Pro-Choice Network v. Project Rescue, 799 F. Supp. 1417 (W.D.N.Y. 1992), motion to vacate denied, 828 F. Supp. 1018 (W.D.N.Y.), appeal dismissed, 994 F.2d 989 (2d Cir. 1993) (enjoining defendants and those in concert from demonstrating within 15 feet of building; demonstrating within 15 feet of any person entering or leaving building, except for non-threatening sidewalk counseling done by no more than two people for every person they want to counsel, provided person does not object; physically

abusing anyone entering or leaving; using loudspeakers to disturb patients or staff within the clinic)

Roe v. Operation Rescue, 710 F. Supp. 577 (E.D. Pa. 1989), aff'd, 919 F.2d 857 (3d Cir.), cert. denied sub nom. Brown v. Elizabeth Blackwell Health Ctr., 498 U.S. 958 (1990) (enjoining defendants and those in concert from blocking ingress or egress from clinics, and physically abusing or tortiously harassing anyone entering or leaving the facilities; permitting sidewalk counseling of a reasonably quiet nature by not more than two people for every person they are seeking to counsel, provided person does not object)

Southwestern Medical Clinics v. Operation Rescue, 744 F. Supp. 230 (D. Nev. 1989) (enjoining defendants from trespassing on, blocking, obstructing ingress or egress from clinics; physically abusing or tortiously harassing persons entering or leaving clinics)

Town of West Hartford v. Operation Rescue, 792 F. Supp. 161 (D.Conn. 1992), vacated and remanded, 991 F.2d 1039 (2d Cir.), cert. denied sub. nom. Syversen v. Summit Women's Ctr. West, 114 S.Ct. 185 (1993) (enjoining defendants and those in concert from entering or remaining on the property; physically blocking, obstructing, or otherwise impeding access to clinic)

Wisconsin v. Missionaries to the Preborn, 796 F. Supp. 389 (E.D. Wisc. 1992) (enjoining defendants and those in concert from impeding access to clinic and parking lots; demonstrating within 25 feet of any door, driveway, parking lot entrance or exit, or any person entering or leaving the facility; physically abusing anyone entering or leaving; permitting non-threatening sidewalk counseling by two people per individual or group sought to be counseled

provided person does not object)

Women's Health Care Servs. v. Operation Rescue, 773 F. Supp. 258 (D. Kan. 1991), appeal pending, No. 91-3250 (10th Cir. Oct. 11, 1991) (enjoining defendants and those in concert from blocking entrances and exits to clinic)

APPENDIX I(B):

Reported State Cases Issuing or Upholding Similar Injunctions*

Bering v. SHARE, 721 P.2d 918 (Wash. 1986), cert. dismissed, 479 U.S. 1050 (1987) (affirming injunction enjoining defendants from picketing directly in front of a medical clinic; threatening anyone going in or out of the clinic)

Boffard v. Barnes, 591 A.2d 699 (N.J. Super. Ct. Ch. Div. 1991), aff'd in part, modified in part, 624 A.2d 1 (N.J. Super. Ct. App. Div.), cert. granted, 627 A.2d 1150 (N.J. 1993) (enjoining defendants and those in concert from picketing in immediate vicinity of doctor's residence)

Dayton Women's Health Ctr. v. Enix, 589 N.E.2d 121 (Ohio Ct. App. 1991), cert. denied, 112 S.Ct. 3033 (1992) (enjoining defendant class from blocking access to clinic or picketing within view of the clinic in groups larger than ten; restricting targeted picketing of employee's residence)

Downtown Women's Ctr. v. Advocates for Life, 826 P.2d 637 (Or. Ct. App. 1992) (affirming finding of contempt based on injunction enjoining defendants from harassing, intimidating, or obstructing people entering the clinic)

Ex Parte Tucci, 859 S.W.2d 1 (Tex. 1993) (leaving intact part of an injunction enjoining defendants from blocking entrance to and exit from the clinic; demonstrating within 25 feet of any person entering or exiting; physically abusing or harassing anyone entering or exiting; making any noise

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* Cases are listed in alphabetical order.

that interferes with the clinic or endangers health or safety of patients and staff)

Fairfield Commons Condominium Ass'n v. Stasa, 506 N.E.2d 237 (Ohio Ct. App. 1985), cert. denied sub nom. Moriarity v. Fairfield Commons Condominium Ass'n, 479 U.S. 1055 (1987) (affirming injunction enjoining defendants from picketing or other activities in the vicintiy of the residence of doctor)

Fargo Women's Health Org. v. Lambs of Christ, 488 N.W.2d 401 (N.D. 1992), aff'd on appeal after remand, 502 N.W.2d 536 (N.D. 1993) (affirming part of injunction enjoining defendants from making any noise that substantially interferes with the provision of medical services; going within 100 feet of the property line of the facility when it is open, except that two people may peacefully picket; following, harassing, and intimidating the staff and patients)

Feminist Women's Health Ctr. v. Blythe, 22 Cal. Rptr.2d 184 (Ct. App. 1993), petition for cert. filed, 62 U.S.L.W. 3556 (U.S. Feb. 8, 1994) (No. 93-1279) (affirming injunction enjoining defendants from conducting any activity in a designated "speech free zone" in front of building; making any noise that interferes with the clinic)

Hirsh v. City of Atlanta, 401 S.E.2d 530 (Ga.), cert. denied, 112 S.Ct. 75 (1991) (affirming injunction enjoining defendants and those in concert from conducting a demonstration of more than 20 people within 50 feet of any clinic or parking lot; approaching patients closer than 5 feet, unless that person consents; impeding access to clinic or parking lot)

Horizon Health Ctr. v. Felicissimo, 622 A.2d 891 (N.J.

Super. Ct. App. Div.), cert. granted, 634 A.2d 527 (N.J. 1993) (affirming injunction enjoining defendants and those in concert from trespassing; gathering in a way that harasses the staff and patients; using obscene or abusive language directed at employees or patients; shouting abusive statements; blocking ingress or egress; demonstrating limited to location across the street from the clinic)

Kaplan v. Prolife Action League, 431 S.E.2d 828 (N.C. Ct. App.), rev. denied, 436 S.E.2d 379 (N.C. 1993), petition for cert. filed, 62 U.S.L.W. 3511 (U.S. Jan. 18, 1994) (No. 93-1159) (affirming injunction enjoining defendants from picketing anywhere on doctor's street, or 300 feet from the center line of that street, and threatening or confronting plaintiffs at home or elsewhere)

Klebanoff v. McMonagle, 552 A.2d 677 (Pa. Super. Ct. 1988), appeal denied, 563 A.2d 888 (Pa. 1989) (affirming permanent injunction enjoining defendants from picketing or demonstrating in the street directly in front of the home of doctor)

Lovejoy Specialty Hosp. v. Advocates for Life, 802 P.2d 684 (Or. Ct. App. 1990) (affirming civil contempt order based on injunction enjoining defendants from demonstrating in a "clear area" in front of the hospital; blocking entrance to and exit from the hospital; intimidating and/or harassing employees and patients; making noise that substantially interferes with the operation of the hospital)

Murray v. Lawson, 624 A.2d 3 (N.J. Super. Ct. App. Div.), cert. granted, 627 A.2d 1149 (N.J. 1993) (affirming lower court permanent injunction enjoining defendant and those in concert from picketing within 300 feet of the doctor's residence)

Parkmed Co. v. Pro-life Counselling, 457 N.Y.S.2d 27 (App. Div. 1st Dep't 1982) (enjoining defendants from blocking the entrance to the clinic; interfering with normal clinic operation; physically abusing and harassing people entering or exiting)

Planned Parenthood League v. Operation Rescue, 550 N.E.2d 1361 (Mass. 1990) (enjoining defendants and those in concert from obstructing access to clinic or committng acts of violence against those entering and leaving)

Planned Parenthood v. Cannizzaro, 499 A.2d 535 (N.J. Super. Ct. Ch. Div. 1985), aff'd, 526 A.2d 741 (N.J. Super. Ct. App. Div. 1987) (enjoining defendants and those in concert from intimidating or harassing anyone entering or exiting; shouting loud statements; obstructing vehicular or pedestrian access)

Planned Parenthood v. Maki, 478 N.W.2d 637 (Iowa 1991) (affirming permanent injunction against defendant enjoining her from blocking access to clinic)

Planned Parenthood v. Project Jericho, 556 N.E.2d 157 (Ohio 1990) (affirming injunction enjoining defendants and those in concert from screaming or chanting with the intent to reach patients inside the clinic; screaming at any patient entering or leaving the clinic; mass picketing)

Planned Parenthood v. Williams, 16 Cal. Rptr. 2d 540 (Ct. App.), review granted, 19 Cal. Rptr.2d 492 (1993) (affirming part of injunction enjoining defendants from blocking any entrance to the clinic; picketing in front of the clinic; making any noise that can be heard inside the clinic)

Planned Parenthood v. Wilson, 282 Cal. Rptr. 2d 760 (Ct. App.), vacated, 285 Cal. Rptr. 278, reinstated and aff'd,

286 Cal. Rptr. 427 (Ct. App. 1991) (affirming injunction enjoining defendants from hindering access to the clinic or parking lot; making any noise that substantially interferes with the provision of health care services; harassing any patients or employees)

Powell v. Ward, 425 S.E.2d 539 (Va. Ct. App. 1993) (holding that evidence supported the finding that defendants violated an injunction enjoining defendants and those in concert from blocking the entrance to the clinic; physically abusing or tortiously harassing anyone entering or exiting, but reversing and remanding because particular defendants were not acting "in concert")

Reproductive Health Servs. v. Lee, 712 S.W.2d 718 (Mo. Ct. App. 1986) (affirming permanent injunction enjoining defendants and those in concert from trespassing on clinic premises; impeding ingress or egress from the facility)

Right to Life Advocates v. Aaron Women's Clinic, 737 S.W.2d 564 (Tex. Ct. App. 1987), cert. denied, 488 U.S. 824 (1988) (affirming injunction enjoining defendants from entering or trespassing on clinic premises for the purposes of picketing, counseling, physically confronting on harassing customers or employees or distributing information)

Welsh v. Johnson, 508 N.W.2d 212 (Minn. Ct. App. 1993) (affirming restraining order entered against defendant enjoining him from coming within 15 feet of clinic director or within two blocks of her home and from continued surveillance of her)

APPENDIX II

APPENDIX II:

Unreported Florida State Cases Issuing or Upholding Similar Injunctions*

Broward County N.O.W. v. Randall Terry, Civ. No. 89-31922 CT-15 (Fla. Cir. Ct. Jan. 10, 1990) (enjoining defendants and those in concert from impeding entrance to or exit from any facility where abortions are performed in Broward County; demonstrating within 15 feet of any person entering or leaving; physically abusing anyone entering or leaving; causing physical damage to facility)

Dade County N.O.W. v. Randall Terry, et al., Civ. No. 90-18586 (Fla. Cir. Ct. Apr. 21, 1990) (enjoining defendants and those in concert, including Rescue America, from blocking entrance to or exit from any facility in Dade County where abortions performed or family planning services provided; physically abusing anyone entering or exiting such facility)

Family Planning v. Raney, Civ. No. 93-31464-CICI (Fla. Cir. Ct. July 13, 1993) (enjoining defendants and those in concert from blocking entrance or exit to the clinic facility; congregating within 36 feet of the property line; during hours of surgical procedures and recovery, making noises audible inside the clinic, or displaying images visible from the clinic; approaching anyone seeking services at the facility within 300 feet of the facility, unless the person indicates a desire to be approached; sidewalk counseling is allowed within the 300 foot area but never within the 36 foot buffer zone; demonstrating within 300 feet of employees' residences or blockading access to residence; harassing, assaulting or intimidating any employee; jamming phone lines of clinic or employees' residences)

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* Cases are listed in alphabetical order.

Sarasota Women's Health Ctr. v. Operation Rescue, Civ. No. 91-6132-CA-01 (Fla. Cir. Ct. Dec. 21, 1992) (enjoining defendants and those in concert from making any noise audible above general traffic noise from inside the clinic or clinic employee's home nearby; going within 10 feet of or crossing the driveway to the clinic)

South Palm Beach County N.O.W. v. Randall Terry, Civ. No. CI 89-4336-AN (Fla. Cir. Ct. Jan. 22, 1993) (enjoining defendants and those in concert from blocking entrance to or exit from any facility where abortions are performed in South Palm Beach County; demonstrating within 25 feet of any persons seeking access or leaving; physically abusing, harassing, or impeding any person entering or exiting; making noise that interferes with the normal activities on the premises)

Women's Health Ctr. v. Operation Rescue, et al., Civ. No. 91-9428 (Fla. Cir. Ct. Oct. 7, 1992) (enjoining defendants, including Judy Madsen, Ed Martin, and Shirley Hobbs, from blocking entrance to or exit from any facility performing abortions in Orange or Osceola County; physically abusing or tortiously harassing anyone entering or exiting)

APPENDIX III

APPENDIX III

STATEMENTS OF INTEREST OF AMICI CURIAE

The **NOW Legal Defense and Education Fund** (NOW LDEF) is a leading national non-profit civil rights organization that performs a broad range of legal and educational services in support of women's efforts to eliminate sex-based discrimination and to secure equal rights. NOW LDEF was founded as an independent organization in 1970 by leaders of the National Organization for Women. A major goal of NOW LDEF's work is to secure reproductive rights and specifically to ensure that women have access to clinics. To this end, NOW LDEF has litigated numerous cases against Operation Rescue, including Bray v. Alexandria Women's Health Clinic, 113 S.Ct. 753 (1993), which was argued by the legal director of NOW LDEF, and several cases with existing injunctions similar to the ones at issue here, including New York State Nat'l Org. for Women v. Terry, 697 F. Supp. 1324 (S.D.N.Y. 1988) and 704 F. Supp. 1247 (S.D.N.Y.), appeals consolidated and aff'd as modified, 886 F.2d 1339 (2d Cir. 1989), cert. denied, 495 U.S. 947 (1990), and Nat'l Org. for Women v. Operation Rescue, 726 F. Supp. 300 (D.D.C. 1989), 747 F. Supp. 760 (D.D.C. 1990), appeal pending, Nos. 91-7001, 91-7006 (D.C. Cir.).

The **National Organization for Women** ("NOW") is the nation's largest feminist organization devoted to the advancement of women's rights, with over 280,000 members and more than 700 chapters in all 50 states and the District of Columbia. NOW has, since its inception, worked for reproductive freedom for all women. In addition to bringing the case National Org. for Women v. Scheidler, 114 S.Ct. 798 (1994), and Bray v. Alexandria Women's Health Clinic, 113 S.Ct. 753 (1993), it is also the plaintiff in several cases with existing injunctions similar to

the ones at issue here, including New York State Nat'l Org. for Women v. Terry, 697 F. Supp. 1324 (S.D.N.Y. 1988) and 704 F. Supp. 1247 (S.D.N.Y.), appeals consolidated and aff'd as modified, 886 F.2d 1339 (2d Cir. 1989), cert. denied, 495 U.S. 947 (1990), and Nat'l Org. for Women v. Operation Rescue, 726 F. Supp. 300 (D.D.C. 1989), 747 F. Supp. 760 (D.D.C. 1990), appeal pending, Nos. 91-7001, 91-7006 (D.C. Cir.).

John E. Cowles is a private attorney in Wichita, Kansas, who represents George R. Tiller, M.D., and Women's Health Care Services, P.A. In 1991, Mr. Cowles obtained an injunction in federal court to prohibit Operation Rescue from blockading the clinic entrances. Women's Health Care Services v. Operation Rescue-National, 773 F. Supp. 258 (D. Kan. 1991), app. pending, No. 91-3250 (10th Cir. Oct. 11, 1991). Mr. Cowles also represented Women's Health Care Services as amicus curiae in the appeal by the City of Wichita successfully challenging the applicability of the "necessity defense" in prosecutions of abortion protestors who trespass on clinic property to interfere with access. City of Wichita v. Tilson, 855 P.2d 911 (Kan. 1993). After Dr. Tiller was shot twice while leaving the clinic on August 19, 1993, Mr. Cowles began working with the Wichita city council to develop a buffer zone ordinance that would separate protestors from the immediate vicinity of the clinic entrances, while preserving other areas for peaceful protests. The outcome of this case will provide guidance to Wichita and other municipalities in developing such ordinances.

Lucinda M. Finley is a Professor of Law at the State University of New York at Buffalo Law School, and she is counsel for several medical facilities that provide abortion and other reproductive health services in Buffalo and Rochester, New York. These medical facilities, their staff,

Rochester, New York. These medical facilities, their staff, and patients have frequently been disrupted, impeded, and harassed by Operation Rescue. Consequently, Professor Finley's clients are currently protected by an injunction similar to the one involved in this case. Pro-Choice Network v. Project Rescue, 799 F. Supp. 1417 (W.D.N.Y. 1992). Operation Rescue is asserting similar First Amendment challenges to the buffer zone and sidewalk counseling restrictions in that injunction, and the U.S. Court of Appeals heard oral argument on these First Amendment issues on March 24, 1994. Pro-Choice Network v. Project Rescue, No. 92-7302 (2d Cir.). The ability of Professor Finley's clients safely to render medical care will be directly affected by the outcome of this case.